

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 28

Session of
1999

INTRODUCED BY MARSICO, GANNON, CLARK, NAILOR, DeLUCA, COY,
KENNEY, SAYLOR, STABACK, BROWNE, PHILLIPS, BARRAR, HERMAN,
READSHAW, GEIST, RUBLEY, BATTISTO, TRUE, WILT, E. Z. TAYLOR,
FAIRCHILD, STERN, ZUG, ROSS, PIPPY, McNAUGHTON, YOUNGBLOOD,
GEORGE, FARGO, GIGLIOTTI, CORRIGAN, BAKER, M. COHEN, BELARDI,
HARHAI, DALLY, SEYFERT, L. I. COHEN, J. TAYLOR, GLADECK,
BENNINGHOFF, BUNT, ALLEN, TRELLO, WASHINGTON, EGOLF,
ARMSTRONG, McILHINNEY, BASTIAN AND SCHRODER, JANUARY 20, 1999

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,
DECEMBER 7, 1999

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for harassment and
3 stalking, ~~for deceptive business practices and~~; PROVIDING FOR <—
4 REIMBURSEMENT TO COMMONWEALTH FOR BUSINESS RELOCATION;
5 FURTHER PROVIDING for drug trafficking sentencing and
6 penalties; and providing for ~~reimbursement to Commonwealth~~ <—
7 ~~for business relocation~~. SPLIT SENTENCES. <—

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 2709(c)(1) of Title 18 of the
11 Pennsylvania Consolidated Statutes is amended to read:

12 § 2709. Harassment and stalking.

13 * * *

14 (c) Grading.--

15 (1) An offense under subsection (a) shall be graded as
16 follows:

1 (i) Except as provided in subparagraph (ii), the
2 offense shall constitute a summary offense.

3 (ii) An offense under subsection (a)(3) if the
4 defendant is or, during the past five years, was engaged
5 in civil litigation with the victim shall constitute a
6 felony of the third degree.

7 * * *

8 ~~Section 2. Section 4107(a) of Title 18 is amended by adding~~ <—
9 ~~a paragraph to read:~~

10 ~~§ 4107. Deceptive or fraudulent business practices.~~

11 ~~(a) Offense defined. A person commits an offense if, in the~~
12 ~~course of business, he:~~

13 * * *

14 ~~(7.1) signs a contract with a consumer for services,~~
15 ~~receives any payment under the contract and fails to perform~~
16 ~~the services required by the written contract;~~

17 * * *

18 Section 3 2. Title 18 is amended by adding a section to <—
19 read:

20 § 4120. Reimbursement to Commonwealth for business relocation.

21 (a) Offense defined.--A person or business entity that
22 receives Commonwealth funding for the creation of employment
23 commits a misdemeanor of the first degree if that person or
24 entity fails to repay the Commonwealth the full amount of the
25 funding 60 days prior to relocation of any unit of the person's
26 or entity's operation, in whole or in part, outside of this
27 Commonwealth within a period of five years from receipt of the
28 funding.

29 (b) Enforcement.--The Attorney General shall enforce the
30 provisions of this section and shall take such actions as may be

1 necessary to ascertain and investigate alleged violations of
2 this section and to impose fines.

3 Section 4 3. Section ~~7508(a)~~ 7508(C) of Title 18 is amended <—
4 AND SUBSECTION (A) IS AMENDED by adding a paragraph to read: <—
5 § 7508. Drug trafficking sentencing and penalties.

6 (a) General rule.--Notwithstanding any other provisions of
7 this or any other act to the contrary, the following provisions
8 shall apply:

9 * * *

10 (7) A person who is convicted of violating section
11 13(a)(14), (30) or (37) of The Controlled Substance, Drug,
12 Device and Cosmetic Act where the controlled substance or a
13 mixture containing it is heroin shall, upon conviction, be
14 sentenced as set forth in this paragraph:

15 (i) when the aggregate weight of the compound or
16 mixture containing the heroin involved is at least 1.0
17 gram but less than ~~5.0~~ 10 grams the sentence shall be a <—
18 mandatory minimum term of two years in prison and a fine
19 of \$5,000 or such larger amount as is sufficient to
20 exhaust the assets utilized in and the proceeds from the
21 illegal activity; however, if at the time of sentencing
22 the defendant has been convicted of another drug
23 trafficking offense: a mandatory minimum term of three
24 years in prison and \$10,000 or such larger amount as is
25 sufficient to exhaust the assets utilized in and the
26 proceeds from the illegal activity;

27 (ii) when the aggregate weight of the compound or
28 mixture containing the heroin involved is at least ~~5.0~~ 10 <—
29 grams but less than ~~50~~ 100 grams; a mandatory minimum <—
30 term of three years in prison and a fine of \$15,000 or

1 such larger amount as is sufficient to exhaust the assets
2 utilized in and the proceeds from the illegal activity;
3 however, if at the time of sentencing the defendant has
4 been convicted of another drug trafficking offense: a
5 mandatory minimum term of five years in prison and
6 \$30,000 or such larger amount as is sufficient to exhaust
7 the assets utilized in and the proceeds from the illegal
8 activity; and

9 (iii) when the aggregate weight of the compound or
10 mixture containing the heroin involved is ~~50~~ 100 grams or <—
11 greater: a mandatory minimum term of five years in prison
12 and a fine of \$25,000 or such larger amount as is
13 sufficient to exhaust the assets utilized in and the
14 proceeds from the illegal activity; however, if at the
15 time of sentencing the defendant has been convicted of
16 another drug trafficking offense: a mandatory minimum
17 term of seven years in prison and \$50,000 or such larger
18 amount as is sufficient to exhaust the assets utilized in
19 and the proceeds from the illegal activity.

20 * * *

21 (C) MANDATORY SENTENCING.--[THERE] EXCEPT AS PROVIDED IN <—
22 SECTION 7508.1 (RELATING TO SPLIT SENTENCES), THERE SHALL BE NO
23 AUTHORITY IN ANY COURT TO IMPOSE ON AN OFFENDER TO WHICH THIS
24 SECTION IS APPLICABLE A LESSER SENTENCE THAN PROVIDED FOR HEREIN
25 OR TO PLACE THE OFFENDER ON PROBATION, PAROLE, WORK RELEASE OR
26 PRERELEASE OR TO SUSPEND SENTENCE. NOTHING IN THIS SECTION SHALL
27 PREVENT THE SENTENCING COURT FROM IMPOSING A SENTENCE GREATER
28 THAN PROVIDED HEREIN. SENTENCING GUIDELINES PROMULGATED BY THE
29 PENNSYLVANIA COMMISSION ON SENTENCING SHALL NOT SUPERSEDE THE
30 MANDATORY SENTENCES PROVIDED HEREIN. DISPOSITION UNDER SECTION

1 17 OR 18 OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC
2 ACT SHALL NOT BE AVAILABLE TO A DEFENDANT TO WHICH THIS SECTION
3 APPLIES.

4 * * *

5 SECTION 4. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ:
6 § 7508.1. SPLIT SENTENCES.

7 (A) PETITION.--IN ANY CASE SUBJECT TO THE MANDATORY
8 SENTENCING PROVISIONS OF SECTION 7508 (RELATING TO DRUG
9 TRAFFICKING SENTENCING AND PENALTIES), THE ATTORNEY FOR THE
10 COMMONWEALTH MAY PETITION THE COURT TO APPLY TO THE CASE THE
11 SPLIT SENTENCING PROVISIONS OF THIS SECTION. WHILE THE COURT MAY
12 RECOMMEND THE CASE TO THE ATTORNEY FOR THE COMMONWEALTH AS
13 APPROPRIATE FOR CONSIDERATION UNDER THIS SECTION, THE DECISION
14 TO PETITION OR NOT TO PETITION FOR THE APPLICATION TO THE CASE
15 OF THE SPLIT SENTENCING PROVISIONS SHALL BE AT THE SOLE
16 DISCRETION OF THE ATTORNEY FOR THE COMMONWEALTH AND SHALL NOT BE
17 SUBJECT TO APPEAL.

18 (B) COURT HEARING.--AFTER A PUBLIC HEARING IN OPEN COURT IN
19 THE PRESENCE OF THE DEFENDANT, THE DEFENDANT'S ATTORNEY AND THE
20 ATTORNEY FOR THE COMMONWEALTH, THE COURT MAY, BUT SHALL NOT BE
21 REQUIRED TO, APPLY TO THE CASE THE SPLIT SENTENCING PROVISIONS
22 OF THIS SECTION IF THE COURT FINDS THAT ALL OF THE FOLLOWING
23 HAVE BEEN ESTABLISHED:

24 (1) THE DEFENDANT HAS BEEN ASSESSED BY A CERTIFIED
25 ADDICTION COUNSELOR, PSYCHIATRIST WITH A CERTIFICATE IN
26 ADDICTION PSYCHIATRY, MEDICAL DOCTOR CERTIFIED IN ADDICTION
27 TREATMENT BY THE AMERICAN SOCIETY OF ADDICTION MEDICINE OR
28 PSYCHOLOGIST SPECIALIZING IN ADDICTION TREATMENT, USING THE
29 PENNSYLVANIA PLACEMENT CRITERIA OR OTHER CRITERIA DESIGNATED
30 BY THE BUREAU OF DRUG AND ALCOHOL PROGRAMS OF THE DEPARTMENT

1 OF HEALTH AND HAS BEEN DETERMINED TO BE ADDICTED TO DRUGS OR
2 ALCOHOL. THE ASSESSOR MUST HAVE AT LEAST THREE YEARS
3 EXPERIENCE IN TREATING AND ASSESSING DRUG-ADDICTED OR
4 ALCOHOL-ADDICTED CRIMINAL OFFENDERS.

5 (2) THE DEFENDANT'S DRUG TRAFFICKING WAS CAUSED BY OR
6 RESULTED FROM THE DEFENDANT'S DRUG OR ALCOHOL ADDICTION.

7 (3) THE CIRCUMSTANCES SURROUNDING THE DRUG TRAFFICKING
8 OFFENSE INVOLVED NO VIOLENCE.

9 (4) THE DEFENDANT DID NOT DELIVER OR CAUSE TO BE
10 DELIVERED CONTROLLED SUBSTANCES TO ANYONE UNDER 18 YEARS OF
11 AGE.

12 (5) A TREATMENT PLAN HAS BEEN DEVELOPED THAT IS
13 CLINICALLY APPROPRIATE AND CONSISTENT WITH THE ASSESSMENT
14 CONDUCTED PURSUANT TO PARAGRAPH (1).

15 (6) AN INTENSIVE PAROLE SUPERVISION PLAN HAS BEEN
16 DEVELOPED THAT IS CONSISTENT WITH PUBLIC SAFETY AND THE DRUG
17 AND ALCOHOL TREATMENT PLAN.

18 (C) AGREEMENT TO THE SENTENCE.--IF THE COURT APPLIES TO THE
19 CASE THE SPLIT-SENTENCING PROVISIONS OF THIS SECTION, THE COURT
20 SHALL INDICATE ON THE RECORD THE SPECIFIC TERM OF IMPRISONMENT
21 UNDER SECTION 7508 THAT OTHERWISE WOULD HAVE BEEN APPLICABLE.
22 THE COURT SHALL INFORM THE PARTIES OF ITS INTENDED JUDGMENT OF
23 SENTENCE, WHICH SHALL BE A COMBINATION OF IMPRISONMENT,
24 TREATMENT IN ACCORDANCE WITH THE TREATMENT PLAN AND INTENSIVE
25 PAROLE SUPERVISION IN ACCORDANCE WITH THE INTENSIVE PAROLE
26 SUPERVISION PLAN. IF EITHER THE DEFENDANT OR THE ATTORNEY FOR
27 THE COMMONWEALTH OBJECTS TO THE INTENDED SENTENCE, THE SPLIT
28 SENTENCE SHALL BE IMMEDIATELY WITHDRAWN.

29 (D) PAROLE.--NO DEFENDANT SENTENCED UNDER THIS SECTION SHALL
30 BE ELIGIBLE FOR PAROLE PRIOR TO THE EXPIRATION OF THE MINIMUM

1 TERM OF IMPRISONMENT IMPOSED UNDER THE SPLIT SENTENCE. PAROLE
2 SHALL BE CONDITIONED UPON THE DEFENDANT'S PARTICIPATION AND
3 COOPERATION WITH CLINICALLY APPROPRIATE DRUG AND ALCOHOL
4 TREATMENT IN ACCORDANCE WITH THE TREATMENT PLAN, AND COOPERATION
5 WITH THE CONDITIONS OF THE INTENSIVE PAROLE SUPERVISION PLAN.
6 ALL TREATMENT SHALL OCCUR IN NONPROFIT FACILITIES LICENSED BY
7 THE DEPARTMENT OF HEALTH TO PROVIDE DRUG AND ALCOHOL TREATMENT
8 SERVICES, AND DESIGNATED BY THE DEPARTMENT OF HEALTH TO HAVE
9 SUFFICIENT EXPERIENCE AND EXPERTISE IN TREATING DRUG-ADDICTED OR
10 ALCOHOL-ADDICTED CRIMINAL OFFENDERS.

11 (E) PAROLE VIOLATIONS.--IF THE DEFENDANT HAS BEEN FOUND TO
12 HAVE VIOLATED ANY CONDITIONS OF THE INTENSIVE PAROLE, THE
13 DEFENDANT SHALL BE RECOMMITTED TO SERVE A TERM OF IMPRISONMENT
14 THAT, WHEN COMBINED WITH THE INITIAL TERM OF IMPRISONMENT,
15 EQUALS OR EXCEEDS THE MANDATORY MINIMUM SENTENCE INDICATED
16 PURSUANT TO SUBSECTION (C).

17 Section 5. This act shall take effect in 60 days.